

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Suspension
of the Family Day Care License of Lori
Veroeven

FINDINGS OF FACT,
CONCLUSIONS AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Richard C. Luis on June 5, 1995 at the Nicollet County Courthouse in St. Peter. Todd W. Westphal, Assistant Nicollet County Attorney, 424 South Minnesota Avenue, P.O. Box 360, St. Peter, Minnesota 56082-0360, appeared on behalf of the Nicollet County Social Services Department ("County", "Agency"). The Licensee, Lori Veroeven, 252 Nicollet Avenue, Apartment 5, North Mankato, Minnesota 56003, appeared on her own behalf.

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61 the final decision of the Commissioner of Human Services shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with Maria R. Gomez, Commissioner of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

STATEMENT OF ISSUE

Whether it is appropriate to suspend the Licensee's Family Day Care license for allowing a person under 18 years of age to serve as a substitute caregiver in the absence of the Licensee?

Based on all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. In September of 1993, the Licensee was providing Family Day Care services in her home at 502 Grant Avenue in North Mankato. She lived at that location with her husband, Steve Veroeven, and her two sons (not Mr. Veroeven's children), ages 9 and

10. She had been providing licensed day care services for several years at that point in time.

2. On August 30, 1993, the Licensee's stepdaughter (Mr. Veroeven's daughter from a previous marriage), A.V., gave birth to a son, D.V. After A.V. and D.V. were released from the hospital, they moved into Steve Veroeven's house, thus becoming part of the Licensee's household. A.V. was born June 30, 1978. She was 15 years old when she moved to the Licensee's house and, at the time of the hearing, she was not yet 17 years old.

3. Between approximately late September 1993 and January 1995, the Licensee left her day care children in the sole care of A.V. on numerous occasions. The Licensee's best estimate is that A.V. acted as the only caregiver in the home on approximately four full days per year (when the Licensee had to leave St. Peter for medical appointments) and two or three times per month for shorter periods of time, when the Licensee ran errands or attended to emergency situations. Spreading that level of absence over a 16-month period results in an estimate that A.V. served as a substitute caregiver, with no other caregivers in the house, on approximately 40 to 50 occasions.

4. The situation outlined in the preceding Finding was reported to Nicollet County authorities on January 17, 1995. On the following day, the Licensee admitted to Krystyna Szelazek, Day Care Licensing Specialist for the County, that A.V. had served as sole substitute caregiver at the level of frequency noted above, that she was at all times aware of A.V.'s age, and that she knew that persons under the age of 18 were not allowed to serve as caregivers or substitutes.

5. On October 21, 1994, Ms. Veroeven's license was placed on probation for one year for violation of licensing rules regarding capacity, child/adult ratios and the age distribution restrictions for children in her care. She was under the probation period when the situation outlined at Finding 3 was reported to Nicollet County. One condition of the probation (see Exhibit 2) is that Ms. Veroeven comply with all rules governing the licensing of day care facilities. The Licensee admits she violated the rule regarding the legal age for caregivers and substitutes by using A.V. to provide such care at times during the probationary period of her license (between late October 1994 and January 1995).

6. On the occasions when A.V. was left as the sole caregiver for day care children in the Licensee's home, the parents were always informed in advance and given the option to remove their children from the Licensee's home. The parents whose children were left with A.V. asked that, if Ms. Veroeven was to be gone, whether A.V. could watch them. The Licensee always replied that the parents had to ask A.V., which they did. No negative reports were made regarding the quality of care provided by A.V. The girl has not been used as a substitute caregiver since mid-January of 1995. Since then, the Licensee has informed parents that they have to find alternative care whenever she is gone.

7. In early April of 1995, Lori and Steve Veroeven were separated. The Licensee moved for a few days to the home of her parents (also in North Mankato) and, on or about April 12, 1995, she moved to her current address. A.V. and her son

remained at Steve Veroeven's house at 502 Grant Avenue in North Mankato. Except for Monday, April 10, the Licensee provided day care services, no matter where she was living, on every workday in April. (Ex. 6). At the time of the hearing, the Licensee had been living at 252 Nicollet Avenue, Apartment 5, North Mankato for nearly eight weeks, had provided day care on a continuous basis during that time, and had not yet applied for licensure at her new address.

8. In its recommendation to the Minnesota Department of Human Services (MDHS) that further (beyond probation) disciplinary action be taken against Ms. Veroeven's license, the Agency requested a six-month suspension of licensure. On March 1, 1995, MDHS, by Order of the Director of its Division of Licensing (Ex. 1), suspended the license for 30 days, pending this appeal process.

9. At the hearing, counsel for the County made a request for an award of costs, arguing that the Licensee's appeal was frivolous and without merit.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. Any Finding of Fact more properly termed a Conclusion is hereby adopted as such.

2. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.57-14.62 and Minn. Stat. § 245A.08.

3. The Notice of Hearing was proper and all substantive and procedural requirements of law and rule have been fulfilled.

4. At a hearing regarding suspension of a license for foster care, the burden of proof on an agency is to demonstrate reasonable cause to substantiate allegations that a licensee has failed to comply fully with applicable laws or rules. Nicollet County has met this burden regarding the allegation that the Licensee utilized the services of a substitute caregiver who began providing day care services at age 15, continuing thereafter for approximately 16 months.

5. Once Nicollet County met the burden noted in Conclusion 4, the burden of proof shifted to the Licensee to establish by a preponderance of the evidence that she was in full compliance with the laws or rules the County alleges she violated. The Licensee has not met this burden.

6. The Licensee violated Minn. Rule 9502.0365, subp. 5, which provides that children in care must be supervised by a caregiver (required by Minn. Rule 9502.0315, subps. 6, 24 and 29 to be at least 18 years of age) when she left children in the care of A.V., who was born June 30, 1978, on numerous occasions between September 1993 and January 1995.

7. The Licensee is in violation of Minn. Rule 9502.0335, subp. 11A., which requires a new application form to be submitted when a licensee wants to move a day care operation to a new residence.

8. It is appropriate to affirm the 30-day suspension of the Family Day Care license of Lori Veroeven.

9. The awarding of costs in a contested case proceeding is within the jurisdiction of the Administrative Law Judge, not that of the Agency for which the hearing is held. Therefore, counsel's request for costs has been decided under separate cover.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner of Human Services affirm the March 1, 1995 decision of the Director of the Division of Licensing and SUSPEND the Family Day Care license of Lori Veroeven for thirty (30) days.

Dated this ____ day of June, 1995

RICHARD C. LUIS
Administrative Law Judge

Reported: Taped

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Department is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

The Licensee admits having violated the rule provisions requiring that a caregiver be at least 18 years old when she utilized A.V. as a substitute caregiver. Her evidence regarding having obtained parental permission or showing that A.V. was competent to provide such care is immaterial to a violation of the age requirement. Her excuse for utilizing A.V., in order to avoid inconvenience to parents who would have to find alternate care (or stay home from work) when she was unable to provide care in person, is self-serving and does nothing to mitigate the minimum age violation.

Regarding an appropriate penalty, a 30-day suspension is recommended because it is an appropriate punishment for the exercise of poor judgment on the Licensee's part in allowing an underage person, even if completely competent, to provide care for children in her absence. It is noted that the situation is unlikely to be repeated, since the Licensee and her stepdaughter now live apart and the Licensee now informs parents in advance that they will have to find alternative care. In addition to these considerations, the Judge notes that, had the Licensee not exercised her right to appeal the 30-day suspension imposed on March 1, a 30-day suspension was the

maximum discipline she could receive. Whatever considerations influenced the MDHS's decision to modify the request by the County for a six-month suspension should still apply. It is also improper to punish the Licensee separately for exercising her right to a contested case hearing, which is guaranteed to her by Minn. Stat. § 245A.07, subd. 3(a).

RCL